U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32548595

Date: AUG. 8, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a mixed martial arts (MMA) fighter, seeks classification as an individual of extraordinary ability in the athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Under section 203(b)(1)(A) of the Act, an individual is eligible for the extraordinary ability classification if: (i) they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; (ii) they seek to enter the United States to continue work in the area of extraordinary ability; and (iii) their entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an athlete who competes as a lightweight (individuals who weigh up to 155 pounds) MMA fighter. At the time of filing the petition in December 2022, the Petitioner's competition record included about 13 Ultimate Fighting Championship (UFC) fights; he won around half of these fights.[1] If approved this classification, he intends to continue competing in fighting matches, and when he is not competing, he plans to mentor "future American MMA athletes."

The Director concluded that the Petitioner has not established that he has received a major, internationally recognized prize or award under 8 C.F.R. § 204.5(h)(3) and that he met two of the ten alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), of which he must meet at least three. Specifically, the Director held that he met the plain language criteria for published material and high salary under 8 C.F.R. § 204.5(h)(3)(iii), and (ix).

On appeal, the Petitioner asserts that: (1) he has received a major, internationally recognized award; and (2) he meets the following alternate criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), and original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v).[2] For the reasons discussed below, we conclude that the record does not support a finding that the Petitioner satisfies the initial requirements for an individual of extraordinary ability. While we may not discuss every document submitted, we have reviewed and considered each one.

A. Major International Award

As determined by the Director, the Petitioner has not established that he has earned a one-time achievement of a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). This regulation is consistent with the legislative history of section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), stating that a one-time achievement must be a *major, internationally recognized* award. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739.

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[1] The Petitioner must establish eligibility as an individual of extraordinary ability at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

[2] On appeal, the Petitioner did not assert, nor does the record show that he met the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (vi), (vii), or (x), relating to judging, scholarly articles, artistic display, or commercial success. We consider these issues to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

The record reflects that the Petitioner won a fighting match during the Ultimate Fighting Championship (UFC) [redacted] 2016 [redacted]. The Petitioner asserted before the Director and again on appeal that this UFC win constitutes a one-time achievement of a major, internationally recognized award.

The Director issued a request for evidence (RFE), acknowledging that the Petitioner had won a fighting match at [redacted] and informed him that the initially submitted evidence did not substantiate his assertion that through winning this UFC fight he garnered a major international award. They discussed aspects of the Congressional House report mentioned above, noting that it specifically cited the Nobel Prize as an example of a qualifying one-time achievement, stating that examples of other awards which enjoy major, international recognition might include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. They highlighted that the regulation at 8 C.F.R. § 204.5(h)(3) is consistent with this legislative history, explaining that the one-time achievement must be a major, internationally recognized award, and that the selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. The Director also observed that while an internationally recognized major award could conceivably constitute a one-time achievement without meeting all those elements, it is clear from the example provided by Congress that the award must be global and internationally recognized in the field as one of the top awards.

In response to the RFE, the Petitioner asserted that since "he defeated his opponent via guillotine choke in round two [at [redacted] and was awarded a locker bonus for his outstanding performance, [t]his award definitely qualifies as a major internationally recognized award." He referenced evidence initially submitted with the petition as "proof" of the receipt of such an award, pointing to the evidence in Exhibit 1, which contains an analysis of the fight from UFC.com and an article about the fight from bloodyelbow.com. After reviewing this evidence again, the Director determined that the record did not establish that the Petitioner has earned a major, internationally recognized award.

On appeal, the Petitioner contends:

> The UFC, as a premier MMA organization, attracts fighters and audiences from around the world. The event where [the Petitioner] emerged victorious was not limited to a specific region but was part of the UFC's global reach. [The Petitioner's] win would have been reported in international sports media, contributing to his recognition on a global scale.

Based on our de novo review of the evidence submitted in support of this initial eligibility requirement, we agree with the Director that the material falls far short in demonstrating that the Petitioner's [redacted] qualifies as a major, internationally recognized award. The UFC.com material about [redacted] notes that the Petitioner's fight against S- was one of four "preliminary card" matches that occurred that night, which were followed by four "main card" matches, and then by the "main event" - the fight between [redacted] While UFC.com reported that the Petitioner won his match in the preliminary card competitions, it did not offer analysis that suggests that winning this preliminary match constitutes the attainment of a major international award.

Similarly, the author who wrote the three-page article published on bloodyelbow.com discusses the various outcomes of the [redacted] competitions but limited his discussion about the Petitioner's match to two sentences, stating on page three: "[The Petitioner] took advantage of a reckless [S-] and caught the [redacted] in a guillotine choke that put him to sleep in the second round. Big win for [the Petitioner]." The brief mention about the Petitioner's match in this article does not suggest that the Petitioner's win against S- was commensurate with an achievement comparable to a major international award as required to meet this initial regulatory requirement.

The Petitioner also asserts that his receipt of a UFC "locker bonus" for this win "is indicative of the significance of the achievement within the MMA community and further underscores its status as a major, internationally recognized award." We disagree. Here the Petitioner did not discuss the monetary magnitude of his bonus locker award, nor did he explain how this bonus constitutes the receipt of a "large cash prize" as contemplated by Congress in the House Report.

The Petitioner also asserts on appeal that the Director "acted [in] violation of the due process of law" in finding that he did not possess the requisite major international award to meet the initial requirements at 8 C.F.R. § 204.5(h)(3). The Petitioner does not identify the due process rights that are implicated in the adjudication of his extraordinary ability immigrant petition. *See Lyng v. Payne*, 476 U.S. 926, 942 (1986) (stating that "[w]e have never held that applicants for benefits…have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment."); *see also Azizi v. Thornburgh*, 908 F.2d 1130, 1134 (2d Cir. 1990) (explaining that the Fifth Amendment protects against the deprivation without due process of property rights granted to noncitizens; however, petitioners do not have an inherent property right in an immigrant visa).

Though the Petitioner further asserts that the Director "acted arbitrarily and capriciously," and "erred as a matter of law and a matter of fact" in deciding that the evidence does not establish that the Petitioner has garnered a major international award, he does not identify any specific erroneous conclusions of law or statements of fact in the Director's decision.[3] For instance, he asserts that the Director did not explain the reasons why he determined that his [redacted] win did not constitute a major international award. However, in the RFE the Director explained the statutory and regulatory framework for establishing eligibility for this initial regulatory requirement, identifying the types of awards that might be qualifying and giving the Petitioner notice that the initial evidence provided in support of the petition was insufficient and an opportunity to supplement the evidence of record. In response, the Petitioner pointed to his previously submitted evidence and insisted that this evidence was sufficient to meet the requirements. In the denial, the Director reiterated the information provided in the RFE about major international awards, and concluded the evidence regarding the Petitioner's [redacted] was insufficient to demonstrate this it is a major, internationally recognized prize or award.

On appeal, the Petitioner devotes several pages of his appeal brief to detailing the statutory and regulatory framework, and the USCIS policy guidelines for this highly restrictive immigrant visa classification, and objects that the Director determined that he was not eligible for it. But simply disagreeing with the Director's determination is not sufficient to establish that the Director erred or

[3] The Petitioner offers similar assertions to support his contention that the Director erred in determining that he did not meet at least three of the alternate criteria at 8 C.F.R. § 204.5(h)(3). We incorporate this discussion with respect to the Petitioner's contentions on appeal that he meets at least three of the alternate criteria.

acted arbitrarily and capriciously at arriving at their conclusion that he is ineligible. Based upon our de novo review, we do not find support for the Petitioner's claims that the decision is arbitrary, capricious, and that the Director erred as a matter of law and matter of fact. Rather, the Director's decision discussed and analyzed the evidence in the record consistent with the statutory, regulatory and USCIS policy framework for this classification. Moreover, we agree with the Director's determinations.

Here, the Petitioner has not met his burden by submitting documentary evidence sufficient to show that his [redacted] win was globally reported in international sports media to support his assertions to that effect on appeal. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. We conclude the Petitioner has not submitted probative documentary evidence to establish his assertion that he garnered "global" recognition for this win, or that there are other factors sufficiently documented in the record to establish his eligibility for this initial evidentiary requirement. In evaluating the evidence, eligibility is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chaw*athe, 25 I&N Dec. at 376. The Petitioner's assertions, without probative evidence to substantiate them, do not establish his eligibility. This initial regulatory requirement has not been met.

B. Evidentiary Criteria

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner continues to contend that he has won major UFC awards. Although he has provided information regarding UFC, judges, statistics, rules, media coverage and photos, the evidence is insufficient to establish that these awards are nationally or internationally recognized awards for excellence in the field of endeavor. A UFC competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize from that competition is nationally or internationally recognized. The burden is on the Petitioner to demonstrate the level of recognition and achievement associated with his awards. The submitted documentation does not establish that the Petitioner's awards had a substantial level of recognition beyond the context of the event where it was presented and was therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

The Petitioner also submitted evidence about his black belt ranking, but evidence about this certification does not equate to nationally or internationally recognized prizes or awards for excellence in the field. The black belt certificate reflects that the Petitioner earned a promotion in rank based on his successful completion of a jiu-jitsu skills test, but he has not established that his promotion to this rank constitutes either a prize or an award, nor has he submitted documentation, such as media reports, demonstrating that his rank has received national or international recognition. Therefore, the Petitioner has not established that he meets this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claimed membership with UFC and submitted documentation regarding the entity. Although the Petitioner provided a printout from UFC's website entitled "Apply to Be a Fighter," the document only provides a website address for fighters to create a profile to submit their application. The documentation did not show UFC's membership requirements. The Petitioner has also provided his UFC fighter profile, promotional agreements and contracts with UFC promoters. The Director determined that he had not met this criterion.

On appeal, the Petititioner offers no new evidence about UFC's membership requirements and asserts that "the UFC's selection process is highly competitive and based on the exceptional achievements of prospective members." However, he has not offered documentary evidence sufficient to support his assertions. *Chawathe, supra.* Thus, the Petitioner has not shown that membership with UFC requires outstanding achievements as an essential condition for membership. Therefore, he does not meet this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that his MMA fights and tournaments serve as evidence of his original contributions of major significance in the field. While he demonstrated that he participated in MMA-related events, the Petitioner has not shown how such participation is tantamount to original contributions of major significance in the field. He did not, for instance, point to a particular match or provide a specific example explaining its impact or unusual importance to MMA.

In addition, the Petitioner contends that the Director failed to consider the letters of support submitted by MMA experts and, therefore, it is violation of due process. The letters discuss the Petitioner's achievements as an MMA fighter, as well as his signature move called the [redacted] The letters, however, do not provide specific information explaining how the Petitioner's signature move has influenced the MMA field in a significant manner beyond its impact on the Petitioner winning his own UFC fights. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field may provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[4] On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that forms the basis for meeting this criterion.[5] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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[4] *See generally* 6 *USCIS Policy Manual* F.2

[5] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

While the Petitioner has competed in MMA fights and participated in extensive martial arts training, he has not shown how these activities equate to "original" athletic contributions of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the contributions must be not only original but of major significance. While this suggests that he is knowledgeable and skilled in MMA, it does not establish that he has made original athletic contributions of major significance in the field. Although the Petitioner has earned the admiration of his references, the evidence submitted does not demonstrate that his impact on the sport is commensurate with an original athletic contribution of major significance in the field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has won some UFC fights, but the record does not demonstrate the required sustained national or international acclaim, consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.